

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SCOTT M. MATUSICK,

Plaintiff,

v.

DECISION AND ORDER
07-CV-489A

ERIE COUNTY WATER AUTHORITY et al.,

Defendants.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1). On May 11, 2009, defendants filed a motion for summary judgment. On February 22, 2010, Magistrate Judge Scott filed a Report and Recommendation, recommending that defendant's motion be granted as to the first and sixth claims in the complaint but otherwise denied.

Defendants filed objections to the Report and Recommendation on March 8, 2010. Plaintiff filed a response to the objections on March 23, 2010, and defendants filed reply papers thereafter. The Court held initial oral argument on April 15, 2010, at which time it required supplemental briefing from plaintiff. Plaintiff filed supplemental briefing on April 29, 2010, and defendants filed a supplemental response on May 6, 2010. Oral argument resumed on May 18, 2010.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which

objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, the Court grants defendants' motion for summary judgment as to the first and sixth claims in plaintiff's complaint, but otherwise denies the motion.

The parties are directed to appear before the Court on **Monday, June 28, 2010 at 9:00 a.m.** for a status conference to set a trial date. In light of Rule 25 of the Federal Rules of Civil Procedure, the parties also should be prepared to address how they wish to handle the disclosure in plaintiff's supplemental briefing (Dkt. No. 102 at 22) that defendant Joseph Marzec is deceased.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: June 11, 2010